

11/6/89 VACATION OF OLD COUNTY ROAD -
Leo Evans Property on
Vernon Avenue/Olinger Rd

Smead®

No. 2-153L

HASTINGS, MN
LOS ANGELES-CHICAGO-LOGAN, OH
MCGREGOR, TX-LOCUST GROVE, GA
U.S.A.

Hold resolution
+ Notice of Completion
until city gets
① check for \$500
paid 1/4/89

② Stipulation requested
by T. Erickson

11/28/89 per call from
T.E.

1/5/90 - per
call from T.E.
release resolution



REPORT/RECOMMENDATION

To: MAYOR AND COUNCIL	Agenda Item # <u>IV.A</u>
From: KEN ROSLAND, MANAGER	Consent <input type="checkbox"/>
Date: NOVEMBER 16, 1989	Information Only <input type="checkbox"/>
Subject: VACATION OF OLD COUNTY ROAD RIGHT OF WAY - LEO EVANS PROPERTY	Mgr. Recommends <input type="checkbox"/> To HRA <input checked="" type="checkbox"/> To Council
	Action <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Discussion

Recommendation:

Adopt resolution vacating any interest the City may have in Old County Road right of way on Leo Evans Property per opinion of City Attorney.

Info/Background:

The vacation request was heard by the Council at its meeting of November 6, 1989. The public hearing was continued to November 20 and the request was referred to the City Attorney for review and recommendation.

DORSEY & WHITNEY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

350 PARK AVENUE
NEW YORK, NEW YORK 10022
(212) 415-9200

1330 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
(202) 857-0700

3 GRACECHURCH STREET
LONDON EC3V 0AT, ENGLAND
01-929-3334

36, RUE TRONCHET
75009 PARIS, FRANCE
01-42-66-59-49

FAR EAST FINANCE CENTER
HONG KONG
852-5-8612555

2200 FIRST BANK PLACE EAST
MINNEAPOLIS, MINNESOTA 55402
(612) 340-2600

TELEX 29-0605
FAX (612) 340-2868

THOMAS S. ERICKSON, P. A.
(612) 340-2659

340 FIRST NATIONAL BANK BUILDING
ROCHESTER, MINNESOTA 55903
(507) 288-3156

315 FIRST NATIONAL BANK BUILDING
WAYZATA, MINNESOTA 55391
(612) 475-0373

1200 FIRST INTERSTATE CENTER
BILLINGS, MONTANA 59103
(406) 252-3800

201 DAVIDSON BUILDING
GREAT FALLS, MONTANA 59401
(406) 727-3632

127 EAST FRONT STREET
MISSOULA, MONTANA 59802
(406) 721-6025

CONFIDENTIAL AND PRIVILEGED
COMMUNICATION BETWEEN
ATTORNEY AND CLIENT

November 15, 1989

Honorable Members of City Council, and
Mr. Kenneth E. Rosland, City Manager
City of Edina
4801 West 50th Street
Edina, Minnesota 55424

Dear Members of the City Council
and Mr. Rosland:

The City was recently asked to vacate whatever interest it might have in an old road, no longer used, which presumably extended across property south of Vernon Avenue and east of Olinger Road owned by one Leo Evans. Action on that requested vacation was postponed pending an opinion from this firm as to the ability of the City to "sell" its interest in the right of way. This letter is given in response to that request.

It has been and is the law in this state, as stated by the Minnesota Supreme Court in the case of Headley v. City of Northfield, 35 N.W.2d, 606 (1949): ". . . that the dedication of land, . . ., to the public for streets, alleys, and public grounds, does not pass the fee-simple title thereto, but only such an estate as the purpose of the trust requires, and that the fee, subject to the public easement, remains in the dedicator and his grantees"

The above result holds true whether the dedication to the public use was made pursuant to a statute or pursuant to the common law. The result, therefore, of any public road dedication to the City is that it gives the City only an easement to use the property for the purpose stated in the dedication.

DORSEY & WHITNEY

November 15, 1989
Page Two

Having only an easement, the Minnesota Supreme Court has stated, in the case of Buck v. City of Winona, 135 N.W.2d, 190 (1965), that: ". . . we believe it inconceivable that a municipality could convey to a private person an easement devoted to public purposes. Unlike a private easement appurtenant to an adjoining land, it is "a privilege or liberty, open to the community," of same character as a highway easement, which clearly can never be used except for a public highway . . . and upon release of its right to use the land for those purposes, the land must revert to the fee owners." Also in the case of Simons v. Munch, 132 N.W.2d 321 (1911), the Minnesota Supreme Court stated, in essence, that an easement acquired for public use ends when the public use ceases or is abandoned.

The result of the above quoted statements of the law is that the City has no interest in real estate to sell in connection with the vacation of an easement. The easement gives only a right to use for the purpose stated, and if that use is not continued but is ended, the property reverts to the owner of the fee free of the easement formerly held by the City. Under those fact circumstances there is nothing for the City to sell; it either maintains and uses the easement, or it does not.

However, the City usually must take some action in order to end the interest of the public in and to an easement. That action normally is a resolution of the City vacating the easement. Of course, the City can also lose an easement by abandonment, but the courts have generally held that an abandonment is very difficult to prove and any action that might indicate abandonment is generally construed in favor of the City. (Also, in some cases, the court can order vacation of public easements.) Because the City usually must take some action, some municipalities have charged for that action; the charge being not for an interest in real estate but for the requested and desired action by the municipality. The City of Edina does make such a charge: it imposes a fee of \$75.00 to be paid by any persons requesting vacation of an easement. We have previously advised from time to time that the City, in connection with any of its actions, may charge fees, but those fees must be reasonably related to the actual costs incurred by the City in performing the acts and services requested. To base the fee upon the value of the land or the value of the interest in the land

DORSEY & WHITNEY

November 15, 1989
Page Three

which is being released would not be consistent with that requirement.

Based on the foregoing, it is our opinion that the City has no interest in real estate which it can sell in connection with the vacation of an easement, and that any fees that it does charge in connection with the vacation of an easement must be reasonably related to the actual costs incurred by the City in performing the requested acts.

I trust this is responsive to your inquiry. If you have any further questions, I will be happy to respond to them.

I suggest this communication be treated as a privileged and confidential communication between attorney and client and, therefore, not be released to the public.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Thomas S. Erickson", written in a cursive style.

Thomas S. Erickson

TSE:jd
cc: Mr. Craig Larsen
Mr. Fran Hoffman



4801 WEST 50TH STREET, EDINA, MINNESOTA 55424
612-927-8861

January 8, 1990

Mr. James Ostendorf
9001 E. Bloomington Freeway, Suite 123
Bloomington, MN 55420

Re: Resolution and Notice of Completion
Vacation of old County Road aka old Eden Prairie Road

Dear Mr. Ostendorf:

Enclosed are two certified copies of the resolution adopted by the Edina City Council on November 20, 1989 and two certified copies of the Notice of Completion with regard to the above referenced road right of way vacation.

It is my understanding that you will have the documents entered into the transfer record of the County Auditor and filed with the County Recorder. Please provide me with the recording data when this has been done.

Very truly yours,

Marcella M. Daehn
City Clerk

4 enclosures

cc: Thomas S. Erickson
Dorsey & Whitney



4801 WEST 50TH STREET, EDINA, MINNESOTA 55424
612-927-8861

NOTICE OF COMPLETION OF PROCEEDINGS
ON VACATION OF EASEMENT FOR STREET PURPOSES
IN THE CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA

NOTICE IS HEREBY GIVEN that the City Council of Edina, Hennepin County, Minnesota, on November 20, 1989, adopted a Resolution vacating the old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" after public hearing and notice thereof as required by law and after determining it to be in the best interest of the City and of the public that said street vacation be made, which resolution ordered the vacation of the following described easement for street purposes all as platted and of record in the office of the County Recorder in and for Hennepin County, Minnesota:

The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the following described property:

That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter, said northerly line is marked by Judicial landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southwesterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

Said vacation did not effect, and there was continued, reserved, and retained, by the said resolution ordering the vacation, the following existing easements and authority in, on and under the above vacated area:

1. The City of Edina reserves in favor of itself any and all utility easements and authority of the City of Edina to enter upon the above vacated area to maintain, repair, replace, remove, or otherwise attend to, all of the pipes, mains, lines and hydrants for water, sanitary sewer, or storm and drainage water, now in, on, or under the above vacated area.

The time of completion of proceedings and the effective date of said vacation is January 8, 1990.

BY ORDER OF THE CITY COUNCIL,
CITY OF EDINA

Marcella M Daehn
Marcella M. Daehn
City Clerk



4801 WEST 50TH STREET, EDINA, MINNESOTA 55424
612-927-8861

RESOLUTION

WHEREAS, a resolution of the City Council, adopted the 2nd day of October, 1989, fixed a date for a public hearing on a proposed vacation of easement for street purposes; and

WHEREAS, two weeks' published and posted notice of said hearing was given and the hearing was held on the 20th day of November, 1989, at which time all persons desiring to be heard were given an opportunity to be heard thereon; and
WHEREAS, the Council deems it to be in the best interest of the City and of the public that said easement vacation be made; and

WHEREAS, the Council has considered the extent to which the vacation affects existing easements within the area of the vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same, or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Edina, Hennepin County, Minnesota, that the following described road right of way be and is hereby vacated effective as of November 23, 1989:

The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the following described property:

That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter, said northerly line is marked by Judicial landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southwesterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

Provided, however, that after due consideration, the Council has determined and hereby specifies that the foregoing vacation shall not affect, and there is hereby continued, reserved, and retained, any and all utility easements and authority of the City of Edina to enter upon the above vacated area to maintain, repair, replace, remove, or otherwise attend to, all of the pipes, mains, lines, and hydrants for water, sanitary sewer, or storm and drainage water, now in, on, or under the above vacated area.


The City Clerk is authorized and directed to cause a notice of completion of proceedings to be prepared, entered in the transfer record of the County Auditor, and filed with the County Recorder, in accordance with Minnesota Statutes, Section 412.851.

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution is a true and correct copy of the Resolution duly adopted by the Edina City Council at its Regular Meeting of November 20, 1989 and as recorded in said Regular Meeting.

WITNESS my hand and seal of said City this 8th day of January, 1990.



Marcella M. Daehn
City Clerk

RESOLUTION

WHEREAS, a resolution of the City Council, adopted the 2nd day of October, 1989, fixed a date for a public hearing on a proposed vacation of easement for street purposes; and

WHEREAS, two weeks' published and posted notice of said hearing was given and the hearing was held on the 20th day of November, 1989, at which time all persons desiring to be heard were given an opportunity to be heard thereon; and

WHEREAS, the Council deems it to be in the best interest of the City and of the public that said easement vacation be made; and

WHEREAS, the Council has considered the extent to which the vacation affects existing easements within the area of the vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same, or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Edina, Hennepin County, Minnesota, that the following described road right of way be and is hereby vacated effective as of November 23, 1989:

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Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

Provided, however, that after due consideration, the Council has determined and hereby specifies that the foregoing vacation shall not affect, and there is hereby continued, reserved, and retained, any and all utility easements and authority of the City of Edina to enter upon the above vacated area to maintain, repair, replace, remove, or otherwise attend to, all of the pipes, mains, lines, and hydrants for water, sanitary sewer, or storm and drainage water, now in, on, or under the above vacated area.

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STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

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WITNESS my hand and seal of said City this 8th day of January, 1990.

Marcella M. Daehn
City Clerk

NOTICE OF COMPLETION OF PROCEEDINGS
ON VACATION OF EASEMENT FOR STREET PURPOSES
IN THE CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA

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Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

Said vacation did not effect, and there was continued, reserved, and retained, by the said resolution ordering the vacation, the following existing easements and authority in, on and under the above vacated area:

1. The City of Edina reserves in favor of itself any and all utility easements and authority of the City of Edina to enter upon the above vacated area to maintain, repair, replace, remove, or otherwise attend to, all of the pipes, mains, lines and hydrants for water, sanitary sewer, or storm and drainage water, now in, on, or under the above vacated area.

The time of completion of proceedings and the effective date of said vacation is January 8, 1990.

BY ORDER OF THE CITY COUNCIL,
CITY OF EDINA

Marcella M. Daehn
City Clerk

1/5/80

Mr. Ostendorf called
about the \$50000
check he gave us last Fri.
And the status of the
Resolution he wants -
Call him please at
887-0122

Marks-

Starke

Minnesota Suburban Newspapers

AFFIDAVIT OF PUBLICATION

City of Edina

(Official Publication)

CITY OF EDINA

4801 W. 50TH STREET

EDINA, MINNESOTA 55424

NOTICE OF PUBLIC HEARING
ON VACATION OF EASEMENT FOR
STREET RIGHT OF WAY PURPOSES
IN THE CITY OF EDINA,

HENNEPIN COUNTY, MINNESOTA

NOTICE IS HEREBY GIVEN that the City Council of the City of Edina, Hennepin County, Minnesota, will meet at the Edina City Hall, 4801 W. 50th Street on November 6, 1989 at 7:00 p.m., for the purpose of holding a public hearing on the proposed vacation of the following easement for street right-of-way purposes:

The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the following described property: That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter; said northerly line is marked by Judicial landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with, the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southwesterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

All persons who desire to be heard with respect to the question of whether or not the above proposed street vacation is in the public interest and should be made shall be heard at said time and place. The Council shall consider the extent to which such proposed street vacation affects existing easements within the area of the proposed vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone, or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto, for the purpose of specifying, in any such vacation resolution, the extent to which any or all of any such easements, and such authority to maintain, and to enter upon the area of the proposed vacation, shall continue. BY ORDER OF THE EDINA CITY COUNCIL
MARCELLA M. DAEHN
City Clerk

(Oct. 11, 1989)-ED

STATE OF MINNESOTA)

SS.

COUNTY OF HENNEPIN)

Gregory Ptacin

, being duly sworn on an oath says that he/she is the publisher or authorized agent and employee of the publisher of the newspaper known as Edina Sun-Current, and has full knowledge of the facts which are stated below.

(A) The newspaper has complied with all of the requirements constituting qualification as a qualified newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

(B) The printed Notice of Public Hearing

which is attached was cut from the columns of said newspaper, and was printed and published once each week for one successive weeks; it was first published on Wednesday, the 11 day of October, 1989, and was thereafter printed and published on every _____ to _____ and including _____, the _____ day of _____, 19____; and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice:

abcdefghijklmnopqrstuvwxyz

BY: Gregory Ptacin

TITLE: General Manager

Acknowledged before me on this

30 day of October, 1989.

Notary Public

MERIDEL M. HEDBLUM
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES 7-2-92

RATE INFORMATION

- (1) Lowest classified rate paid by commercial users for comparable space
- (2) Maximum rate allowed by law for the above matter
- (3) Rate actually charged for the above matter

\$	1.00 per line
	(Line, word, or inch rate)
\$	59.0* per line
	(Line, word, or inch rate)
\$	53.7* per line
	(Line, word, or inch rate)

B✓

(Official Publication)

CITY OF EDINA
4801 W. 50TH STREET
EDINA, MINNESOTA 55424

NOTICE OF PUBLIC HEARING
ON VACATION OF EASEMENT FOR STREET RIGHT OF WAY PURPOSES
IN THE CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA

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All persons who desire to be heard with respect to the question of whether or not the above proposed street vacation is in the public interest and should be made shall be heard at said time and place. The Council shall consider the extent to which such proposed street vacation affects existing easements within the area of the proposed vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone, or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto, for the purpose of specifying, in any such vacation resolution, the extent to which any or all of any such easements, and such authority to maintain, and to enter upon the area of the proposed vacation, shall continue.

BY ORDER OF THE EDINA CITY COUNCIL
Marcella M. Daehn, City Clerk

Please publish in the Edina Sun-Current on October 11, 1989.
Please send two Affidavits of Publication.



1/1/74

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF MAILING NOTICE

I, the undersigned, being the duly qualified acting City Clerk of the City of Edina, Minnesota, hereby certify that on the following date October 6, 19 89, acting on behalf of said City I deposited in the United States mail copies of the attached NOTICE OF PUBLIC HEARING ON VACATION OF OLD COUNTY ROAD RIGHT OF WAY (Exhibit A), enclosed in sealed envelopes, with postage thereon duly prepaid, addressed to the persons at the addresses as shown on the mailing list (Exhibit B) attached to the original hereof, which list is on file in my office, said persons being those appearing on the records of the County Auditor as owners of the property listed opposite their respective names, as of a date at least 14 days prior to the date of the hearing; and that I also sent said notice to the following corporations at the indicated addresses whose property is exempt from taxation and is therefore not carried on the records of said County Auditor.

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____
_____	_____

WITNESS my hand and seal of said City this 6th day of October, 19 1989.

Manuela M. Dack
Edina City Clerk

NOTICE OF PUBLIC HEARING
ON VACATION OF EASEMENT FOR STREET RIGHT OF WAY PURPOSES
IN THE CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA

NOTICE IS HEREBY GIVEN that the City Council of the City of Edina, Hennepin County, Minnesota, will meet at the Edina City Hall, 4801 W. 50th Street on November 6, 1989 at 7:00 p.m., for the purpose of holding a public hearing on the proposed vacation of the following easement for street right of way purposes:

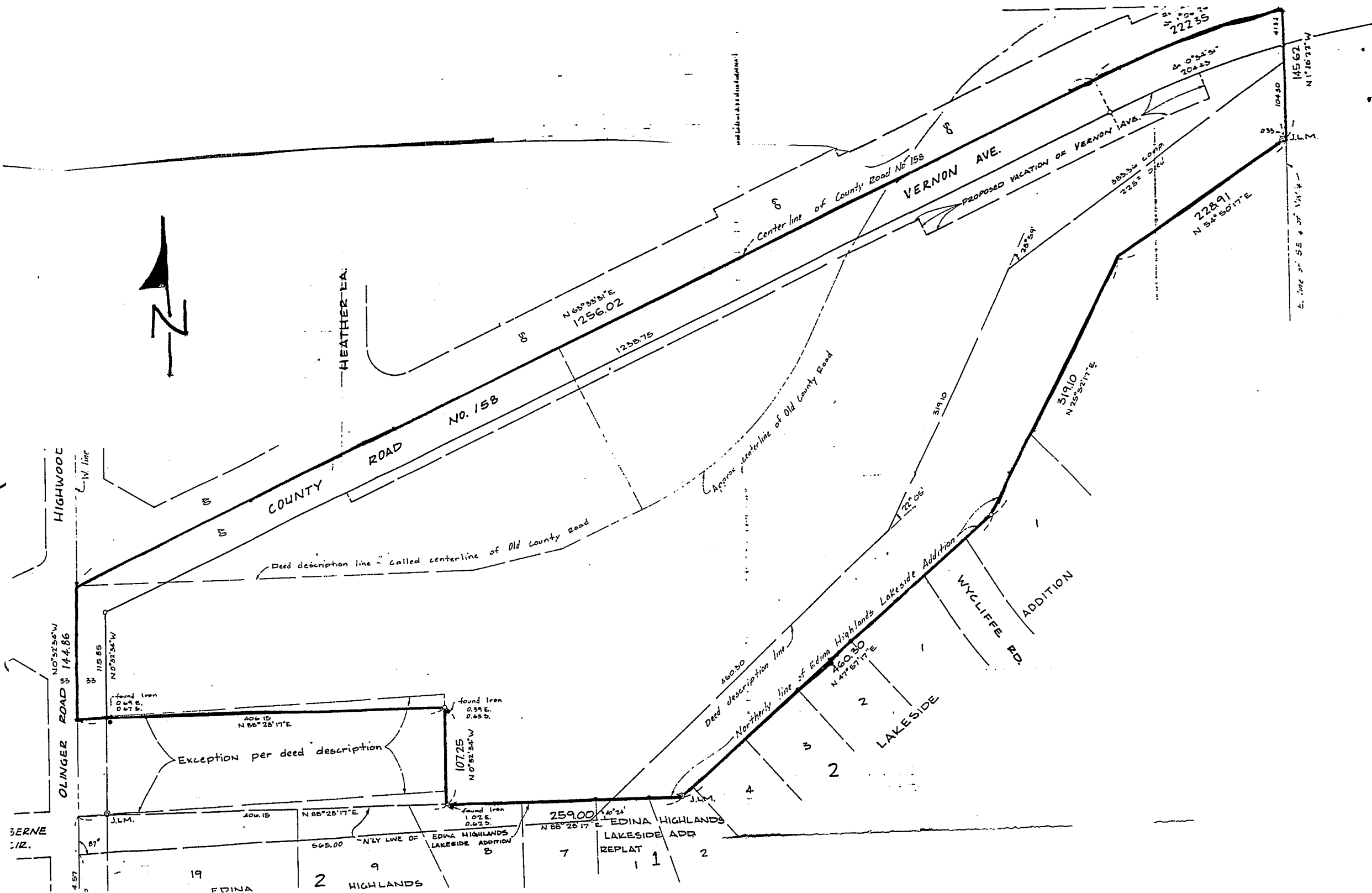
The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the following described property:

That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter, said northerly line is marked by Judicial landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southwesterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

All persons who desire to be heard with respect to the question of whether or not the above proposed street vacation is in the public interest and should be made shall be heard at said time and place. The Council shall consider the extent to which such proposed street vacation affects existing easements within the area of the proposed vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone, or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto, for the purpose of specifying, in any such vacation resolution, the extent to which any or all of any such easements, and such authority to maintain, and to enter upon the area of the proposed vacation, shall continue.

BY ORDER OF THE EDINA CITY COUNCIL
Marcella M. Daehn, City Clerk



MAILING LIST - VACATION OF STREET RIGHT OF WAY - LEO EVANS PROPERTY

(East of Olinger Road and south of
Vernon Avenue)

32-117-21-24-0003 & 0004
Léo Evans
2248 Glacier Lane
Santa Maria, CA 93454

32-117-21-24-0012
Marcella Mosow
5620 Wycliffe Rd
Edina MN 55436

32-117-21-24-0005
Dennis & Diane Wegner
5705 Olinger Rd
Edina MN 55436

32-117-21-24-0006
John & Mary Manning
5617 Wycliffe Rd
Edina MN 55436

32-117-21-24-0017
Earl & Dorothy Carson
5908 Merold Dr
Edina MN 55436

32-117-21-13-0045
William & Alice McGath
5721 Vernon Avenue
Edina MN 55436

32-117-21-24-0016
Alan & Philothea Sweet
5904 Merold Dr
Edina MN 55436

James A. Ostendorf
9001 E. Bloomington Frwy
Suite 123
Bloomington, MN 55420

32-117-21-24-0048
Thomas Cain
Judith Schmitz
5900 Merold Dr
Edina MN 55436

Stuart E. Fraser
NSP Normandale Division
5309 W. 70th Street
Edina MN 55435

32-117-21-24-0049
Ronald & Mildred Gamer
5816 Merold Dr
Edina MN 55436

Pat Hopman
U.S. West Communications
6244 Cedar Avenue So.
Richfield MN 55423

32-117-21-24-0015
James L. Wittman
5812 Merold Dr
Edina MN 55436

Matt Haveland
Paragon Cable
801 Plymouth Ave No
Minneapolis MN 55411

32-117-21-24-0014
Gordon & Lorraine Reno
5808 Merold Dr
Edina MN 55436

Steven Von Vargen
Minnegasco, Inc.
700 Linden Avenue W.
P.O. Box 1165
Minneapolis MN 55440-1165

32-117-21-24-0013
Leonard Swanson
5804 Merold Dr
Edina MN 55436

PUBLIC RIGHT-OF-WAY VACATION APPLICATION

01/03/90

Date Initiated September 13, 1989

- 1) I hereby petition the City Council of the City of Edina to vacate all of the following described public right-of-way:

☒ Street ☐ Alley ☐ Utility Easement

☐ Drainage Easement ☐ Other _____ TOTAL 75.00

(describe)

Legal description of area proposed to be vacated:

02/14/89

The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the Southeast Quarter of the Northwest Quarter of Section 32, Township 117, Range 21, which lies northerly and northwesterly of Edina Highlands Lakeside Addition and southerly of the centerline of County Road No. 158, as presently established.
(see attached explanation)

Attached copy of scaled drawing showing in full detail the proposed vacation.

following described property:
[See Survey]

Excerpt, however, the existing right of way for County Road No. 158, also known as

Signature James A. Osterdorf, Esq.
Address 9001 E. Bloomington Frwy., Suite 123
Bloomington, Minn. 55420
Telephone (612) 881-0122

- 2) Review Vernon R. Rennie, Atty
existing right of way for Chicago Road.

CITY ENGINEER by ☐ Acceptable ☐ Opposed ☐ Conditional

Conditions _____

MINNEGASCO by ☐ Acceptable ☐ Opposed ☐ Conditional

Conditions _____

N.W. BELL by ☐ Acceptable ☐ Opposed ☐ Conditional

Conditions _____

N.S.P. by ☐ Acceptable ☐ Opposed ☐ Conditional

Conditions _____



First Bank
Member First Bank System

Money Order
145 4113 860

TRAVELERS EXPRESS COMPANY INC. - DRAWER
P.O. BOX 9476, Minneapolis, MN 55480

DATE 12-29-89 75-148
919

PAY
TO THE
ORDER OF

CITY OF EDINA

= NOT VALID FOR OVER ONE THOUSAND U.S. DOLLARS

AMOUNT

THE SUM OF \$500.00

DOLLARS

SIGNATURE

James A. Ostrowski

ADDRESS

9001 E. BLOOMINGTON FRWY

PAYABLE THRU
COMMUNITY NATIONAL BANK
NORTHFIELD, MN

BY SIGNING YOU AGREE TO THE SERVICE CHARGE AND OTHER TERMS ON THE REVERSE SIDE.

⑆091901480⑆145 41138603⑆ 90

CITY OF EDINA
4801 W. 50th Street
Edina, Minnesota 55424

STREET AND/OR EASEMENT VACATION REVIEW

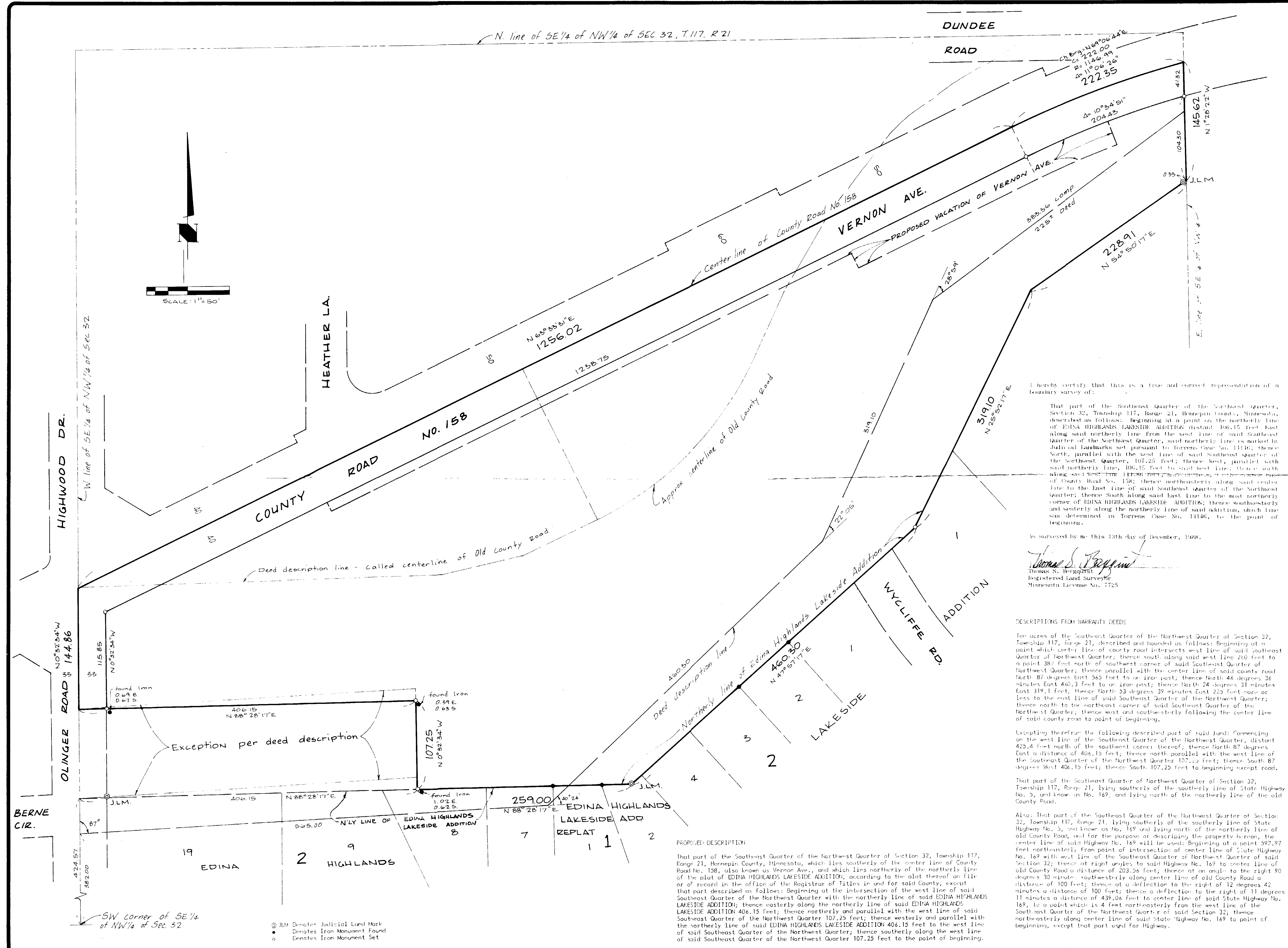
CITY ENGINEER by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
MINNEGASCO by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
U.S. WEST COMMUNICATIONS by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
NSP by <u>Wayne Kalsrud</u>	<input checked="" type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
PARAGON CABLE by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional

CONDITIONS: _____

LOCATION: The old road sometimes referenced as "the old County Road" or the "old Edin Prairie road" lying within the property described on the attached notice of Public Hearing

PLEASE SIGN AND RETURN TO INDICATE RECEIPT OF NOTICE

Return to: City Clerk
City of Edina
4801 W. 50th Street
Edina, MN 55424



REVISIONS	BY
12-13-93	PLC

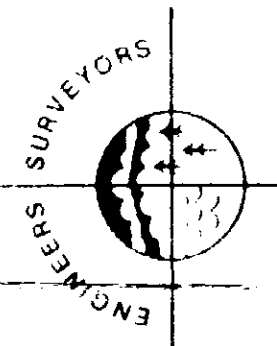
REVISIONS

BY

12-13-93

PLC

SATHRE-BERGQUIST, INC.
935 EAST WAYZATA BLVD. • WAYZATA, MN 55391 • 476-0848



I hereby certify that this is a true and correct representation of a boundary survey of:

That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION, distant 106.15 feet east along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter, said northerly line is marked by Judicial Landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence East, parallel with said northerly line, 106.15 feet to said west line; thence North along said northerly line 147.00 feet to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southeasterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Was surveyed by me this 13th day of December, 1988.

Thomas S. Bergquist
Registered Land Surveyor
Minnesota License No. 7725

DESCRIPTIONS FROM WARRANTY DEEDS

For acres of the Southeast Quarter of the Northwest Quarter of Section 32, Township 117, Range 21, described and bounded as follows: Beginning at a point which center line of county road intersects west line of said Southeast Quarter of Northwest Quarter; thence south along said west line 240 feet to a point 387 feet north of southwest corner of said Southeast Quarter of Northwest Quarter; thence parallel with the center line of said county road North 87 degrees East 365 feet to an iron post; thence North 44 degrees 36 minutes East 460.3 feet to an iron post; thence North 24 degrees 31 minutes East 319.1 feet; thence North 53 degrees 39 minutes East 225 feet more or less to the east line of said Southeast Quarter of the Northwest Quarter; thence north to the northeast corner of said Southeast Quarter of the Northwest Quarter; thence west and southwesterly following the center line of said county road to point of beginning.

Excepting therefrom the following described part of said land: Commencing on the west line of the Southeast Quarter of the Northwest Quarter, distant 425.4 feet north of the southwest corner thereof; thence North 87 degrees East a distance of 406.15 feet; thence north parallel with the west line of the Southeast Quarter of the Northwest Quarter 107.25 feet; thence South 87 degrees West 406.15 feet; thence South 107.25 feet to beginning except road.

That part of the Southeast Quarter of Northwest Quarter of Section 32, Township 117, Range 21, lying southerly of the southerly line of State Highway No. 5, and known as No. 169, and lying north of the northerly line of the old County Road.

Also: That part of the Southeast Quarter of the Northwest Quarter of Section 32, Township 117, Range 21, lying southerly of the southerly line of State Highway No. 5, and known as No. 169 and lying north of the northerly line of old County Road, and for the purpose of describing the property hereon, the center line of said Highway No. 169 will be used: Beginning at a point 597.97 feet northeasterly from point of intersection of center line of State Highway No. 169 with west line of the Southeast Quarter of Northwest Quarter of said Section 32; thence at right angles, to said Highway No. 169 to center line of old County Road a distance of 203.26 feet; thence at an angle to the right 90 degrees 30 minutes, southwesterly along center line of old County Road a distance of 100 feet; thence at a deflection to the right of 12 degrees 42 minutes a distance of 100 feet; thence a deflection to the right of 11 degrees 11 minutes a distance of 439.06 feet to center line of said State Highway No. 169, to a point which is 4 feet northeasterly from the west line of the Southeast Quarter of the Northwest Quarter of said Section 32; thence northeasterly along center line of said State Highway No. 169 to point of beginning, except that part used for Highway.

BOUNDARY SURVEY

Prepared for:

LEO M. EVANS, JR.

DRAWN

MAS

TSS

CHECKED

TSS

DATE

5-2-85

SCALE

1"=50'

JOB NO

2485-1

SHEET

PRINTED

AUG 28 1989

SATHRE-BERGQUIST, INC.

SHEETS

CITY OF EDINA
4801 W. 50th Street
Edina, Minnesota 55424

STREET AND/OR EASEMENT VACATION REVIEW

CITY ENGINEER by *Frank Hoffmann* ☒ Acceptable ☐ Opposed ☐ Conditional

MINNEGASCO by _____ ☐ Acceptable ☐ Opposed ☐ Conditional

U.S. WEST COMMUNICATIONS by _____ ☐ Acceptable ☐ Opposed ☐ Conditional

NSP by _____ ☐ Acceptable ☐ Opposed ☐ Conditional

PARAGON CABLE by _____ ☐ Acceptable ☐ Opposed ☐ Conditional

CONDITIONS: *Maintain any and all utility easements*
Vacate only road right-of-way.

LOCATION: The old road sometimes referenced as "the old County Road" or the "old
Eden Prairie road" lying within the property described on the attached
notice of Public Hearing

PLEASE SIGN AND RETURN TO INDICATE RECEIPT OF NOTICE

Return to: City Clerk
City of Edina
4801 W. 50th Street
Edina, MN 55424

CITY OF EDINA
4801 W. 50th Street
Edina, Minnesota 55424

BERIED

C. SCHMIDT

STREET AND/OR EASEMENT VACATION REVIEW

CITY ENGINEER by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
MINNEGASCO by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
U.S. WEST COMMUNICATIONS by _____ <i>Cory O. Schmidt 10/16/89</i>	<input checked="" type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
NSP by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
PARAGON CABLE by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional

CONDITIONS: _____

LOCATION: The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the property described on the attached notice of Public Hearing

PLEASE SIGN AND RETURN TO INDICATE RECEIPT OF NOTICE

Return to: City Clerk
City of Edina
4801 W. 50th Street
Edina, MN 55424



4801 WEST 50TH STREET, EDINA, MINNESOTA 55424
612-927-8861

NOTICE OF PUBLIC HEARING
ON VACATION OF EASEMENT FOR STREET RIGHT OF WAY PURPOSES
IN THE CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA

NOTICE IS HEREBY GIVEN that the City Council of the City of Edina, Hennepin County, Minnesota, will meet at the Edina City Hall, 4801 W. 50th Street on November 6, 1989 at 7:00 p.m., for the purpose of holding a public hearing on the proposed vacation of the following easement for street right of way purposes:

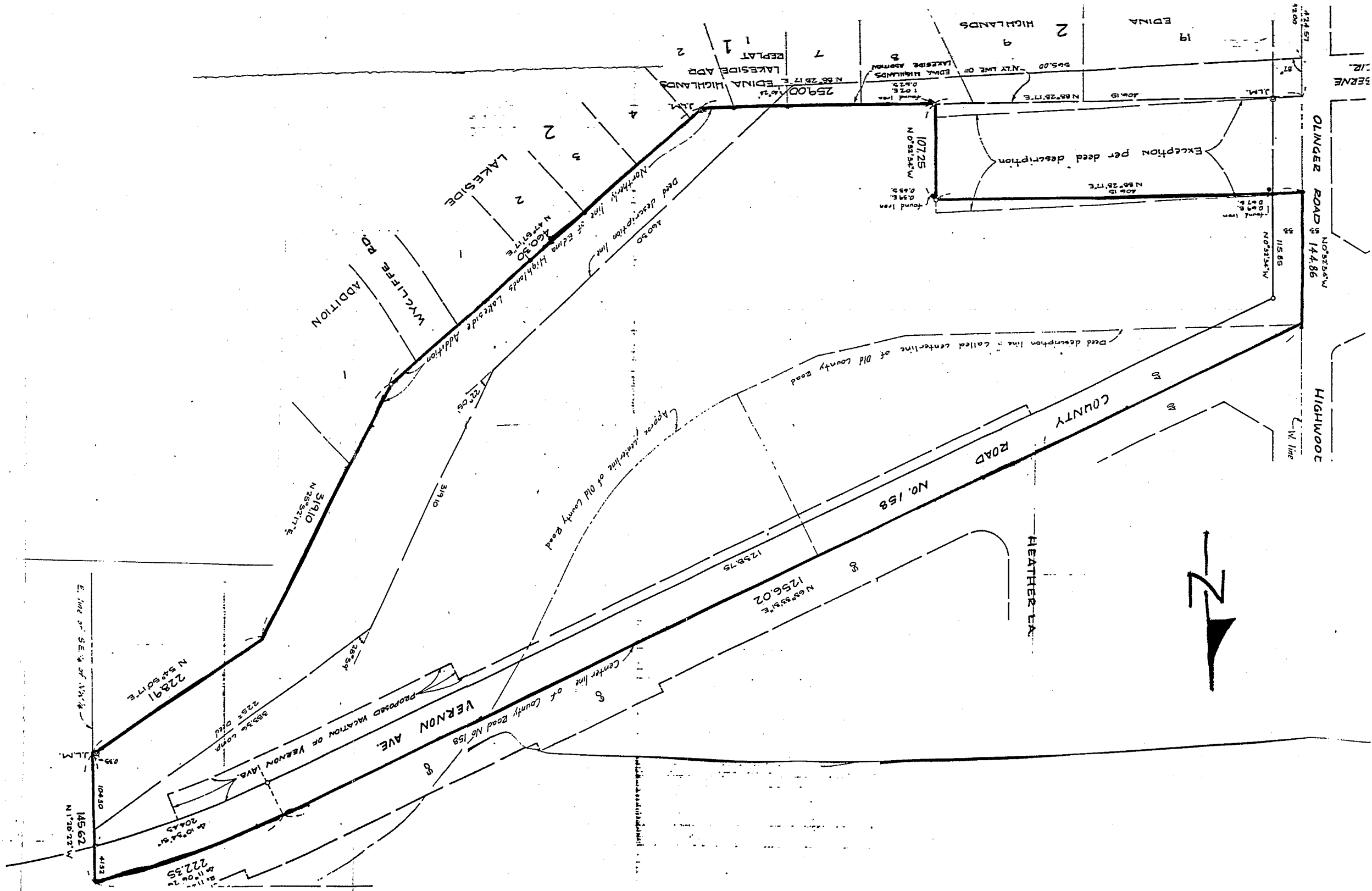
The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the following described property:

That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter, said northerly line is marked by Judicial landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southwesterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

All persons who desire to be heard with respect to the question of whether or not the above proposed street vacation is in the public interest and should be made shall be heard at said time and place. The Council shall consider the extent to which such proposed street vacation affects existing easements within the area of the proposed vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone, or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto, for the purpose of specifying, in any such vacation resolution, the extent to which any or all of any such easements, and such authority to maintain, and to enter upon the area of the proposed vacation, shall continue.

BY ORDER OF THE EDINA CITY COUNCIL
Marcella M. Daehn, City Clerk



DORSEY & WHITNEY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2200 FIRST BANK PLACE EAST
MINNEAPOLIS, MINNESOTA 55402
(612) 340-2600

TELEX 29-0605
FAX (612) 340-2868

THOMAS S. ERICKSON, P. A.
(612) 340-2659

340 FIRST NATIONAL BANK BUILDING
ROCHESTER, MINNESOTA 55903
(507) 288-3156

315 FIRST NATIONAL BANK BUILDING
WAYZATA, MINNESOTA 55391
(612) 475-0373

1200 FIRST INTERSTATE CENTER
BILLINGS, MONTANA 59103
(406) 252-3800

201 DAVIDSON BUILDING
GREAT FALLS, MONTANA 59401
(406) 727-3632

127 EAST FRONT STREET
MISSOULA, MONTANA 59802
(406) 721-6025

CONFIDENTIAL AND PRIVILEGED
COMMUNICATION BETWEEN
ATTORNEY AND CLIENT

November 15, 1989

Honorable Members of City Council, and
Mr. Kenneth E. Rosland, City Manager
City of Edina
4801 West 50th Street
Edina, Minnesota 55424

Dear Members of the City Council
and Mr. Rosland:

The City was recently asked to vacate whatever interest it might have in an old road, no longer used, which presumably extended across property south of Vernon Avenue and east of Olinger Road owned by one Leo Evans. Action on that requested vacation was postponed pending an opinion from this firm as to the ability of the City to "sell" its interest in the right of way. This letter is given in response to that request.

It has been and is the law in this state, as stated by the Minnesota Supreme Court in the case of Headley v. City of Northfield, 35 N.W.2d, 606 (1949): ". . . that the dedication of land, . . ., to the public for streets, alleys, and public grounds, does not pass the fee-simple title thereto, but only such an estate as the purpose of the trust requires, and that the fee, subject to the public easement, remains in the dedicator and his grantees"

The above result holds true whether the dedication to the public use was made pursuant to a statute or pursuant to the common law. The result, therefore, of any public road dedication to the City is that it gives the City only an easement to use the property for the purpose stated in the dedication.

DORSEY & WHITNEY

November 15, 1989

Page Two

Having only an easement, the Minnesota Supreme Court has stated, in the case of Buck v. City of Winona, 135 N.W.2d, 190 (1965), that: ". . . we believe it inconceivable that a municipality could convey to a private person an easement devoted to public purposes. Unlike a private easement appurtenant to an adjoining land, it is "a privilege or liberty, open to the community," of same character as a highway easement, which clearly can never be used except for a public highway . . . and upon release of its right to use the land for those purposes, the land must revert to the fee owners." Also in the case of Simons v. Munch, 132 N.W.2d 321 (1911), the Minnesota Supreme Court stated, in essence, that an easement acquired for public use ends when the public use ceases or is abandoned.

The result of the above quoted statements of the law is that the City has no interest in real estate to sell in connection with the vacation of an easement. The easement gives only a right to use for the purpose stated, and if that use is not continued but is ended, the property reverts to the owner of the fee free of the easement formerly held by the City. Under those fact circumstances there is nothing for the City to sell; it either maintains and uses the easement, or it does not.

However, the City usually must take some action in order to end the interest of the public in and to an easement. That action normally is a resolution of the City vacating the easement. Of course, the City can also lose an easement by abandonment, but the courts have generally held that an abandonment is very difficult to prove and any action that might indicate abandonment is generally construed in favor of the City. (Also, in some cases, the court can order vacation of public easements.) Because the City usually must take some action, some municipalities have charged for that action; the charge being not for an interest in real estate but for the requested and desired action by the municipality. The City of Edina does make such a charge: it imposes a fee of \$75.00 to be paid by any persons requesting vacation of an easement. We have previously advised from time to time that the City, in connection with any of its actions, may charge fees, but those fees must be reasonably related to the actual costs incurred by the City in performing the acts and services requested. To base the fee upon the value of the land or the value of the interest in the land

DORSEY & WHITNEY

November 15, 1989
Page Three

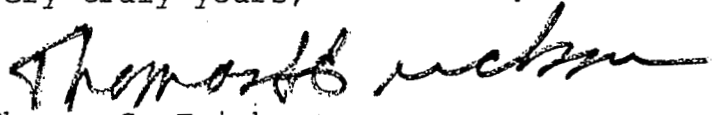
which is being released would not be consistent with that requirement.

Based on the foregoing, it is our opinion that the City has no interest in real estate which it can sell in connection with the vacation of an easement, and that any fees that it does charge in connection with the vacation of an easement must be reasonably related to the actual costs incurred by the City in performing the requested acts.

I trust this is responsive to your inquiry. If you have any further questions, I will be happy to respond to them.

I suggest this communication be treated as a privileged and confidential communication between attorney and client and, therefore, not be released to the public.

Very truly yours,



Thomas S. Erickson

TSE:jd
cc: Mr. Craig Larsen
Mr. Fran Hoffman

CITY OF EDINA
4801 W. 50th Street
Edina, Minnesota 55424

STREET AND/OR EASEMENT VACATION REVIEW

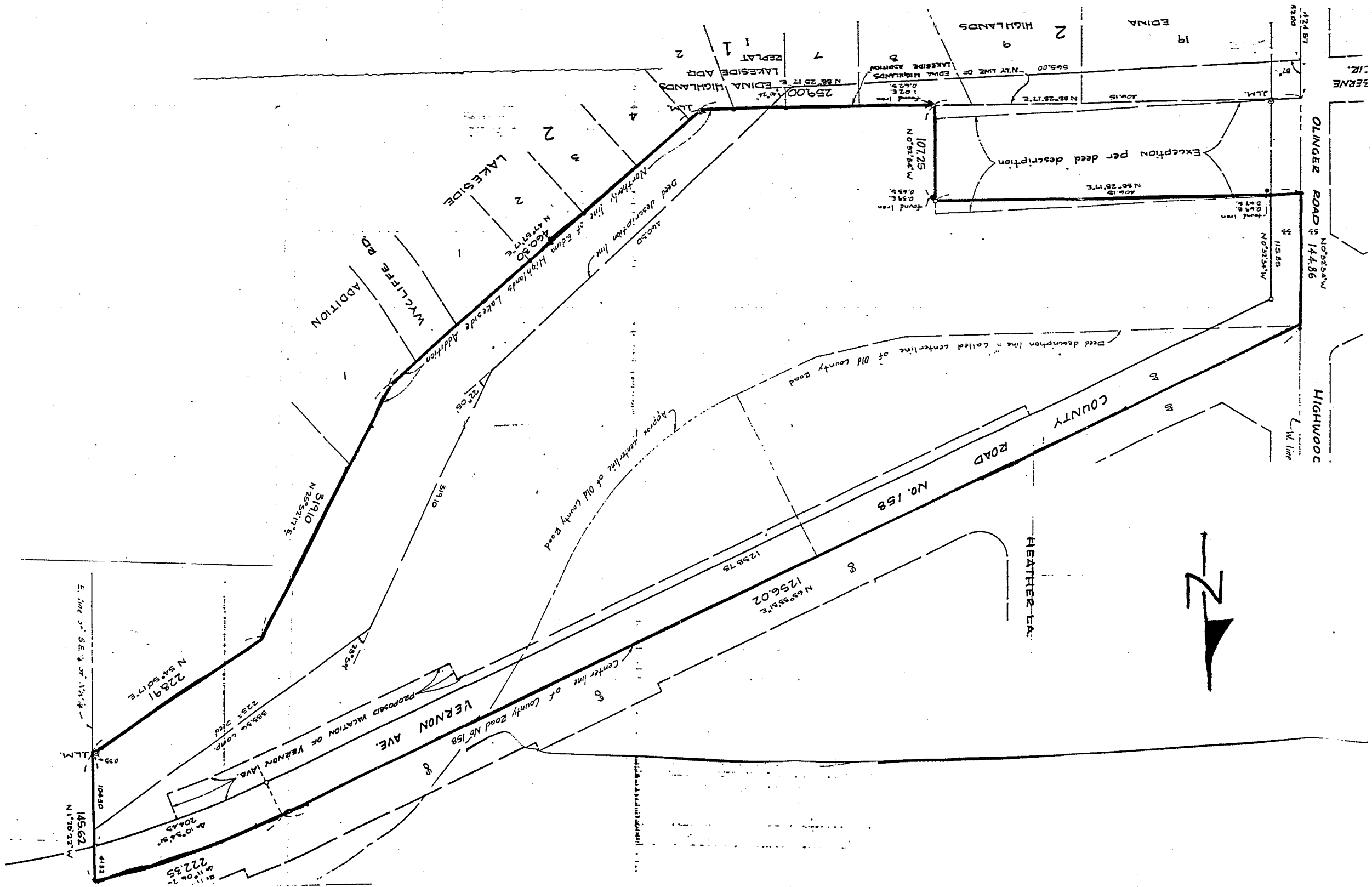
CITY ENGINEER by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
MINNEGASCO by <u>10/10/89</u> <u>Stena W. Benge</u>	<input checked="" type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
U.S. WEST COMMUNICATIONS by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
NSP by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional
PARAGON CABLE by _____	<input type="checkbox"/>	Acceptable	<input type="checkbox"/>	Opposed	<input type="checkbox"/>	Conditional

CONDITIONS: _____

LOCATION: The old road sometimes referenced as "the old County Road" or the "old
Eden Prairie road" lying within the property described on the attached
notice of Public Hearing

PLEASE SIGN AND RETURN TO INDICATE RECEIPT OF NOTICE

Return to: City Clerk
City of Edina
4801 W. 50th Street
Edina, MN 55424





REPORT/RECOMMENDATION

To: KEN ROSLAND, MANAGER	Agenda Item # X.A
From: MARCELLA DAEHN, CLERK	Consent <input checked="" type="checkbox"/>
Date: SEPTEMBER 28, 1989	Information Only <input type="checkbox"/>
Subject: PETITION FOR VACATION OF OLD COUNTY ROAD RIGHT OF WAY	Mgr. Recommends <input type="checkbox"/> To HRA
	<input checked="" type="checkbox"/> To Council
	Action <input type="checkbox"/> Motion
	<input checked="" type="checkbox"/> Resolution
	<input type="checkbox"/> Ordinance
	<input type="checkbox"/> Discussion

Recommendation:

Adoption of a resolution setting November 6, 1989 as hearing date for the vacation of "Old County Road" right of way on the Leo Evans property.

Info/Background:

A petition has been filed with the City requesting vacation of right of way for "Old County Road" on the Leo Evans property, generally located south of Vernon Avenue and east of Olinger Road.

A hearing date of November 6, 1989 is recommended to allow time for the required publication and mailing of notices to adjacent property owners and utility companies.

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

AFFIDAVIT OF POSTING NOTICE OF HEARING ON
VACATION OF "OLD COUNTY ROAD" RIGHT OF WAY

The undersigned, being first duly sworn, upon oath deposes and says that he/she is a duly appointed and acting Police Officer for the City of Edina, Hennepin County, Minnesota, and that on 10/12/89 he/she posted the Notice of Hearing on the vacation described above to be held on November 6, 1989, a true and correct copy of which is hereto attached, at each of the following official City Bulletin Boards located at conspicuous places within the City:

- 1) City Hall, 4801 W. 50th Street
- 2) 50th and France Business Area, 3943 W. 50th Street
- 3) Amundson Avenue Shopping Center - NW corner of Parking Lot

Dated

10/12/89

Signed

C. J. APL

Police Officer

Signed and sworn to before me, a Notary Public
in and for Hennepin County, Minnesota, this

12th day of October, 19 89.

Maurice M. Bach

NOTICE OF PUBLIC HEARING
ON VACATION OF EASEMENT FOR STREET RIGHT OF WAY PURPOSES
IN THE CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA

NOTICE IS HEREBY GIVEN that the City Council of the City of Edina, Hennepin County, Minnesota, will meet at the Edina City Hall, 4801 W. 50th Street on November 6, 1989 at 7:00 p.m., for the purpose of holding a public hearing on the proposed vacation of the following easement for street right of way purposes:

The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the following described property:

That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter, said northerly line is marked by Judicial landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southwesterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

All persons who desire to be heard with respect to the question of whether or not the above proposed street vacation is in the public interest and should be made shall be heard at said time and place. The Council shall consider the extent to which such proposed street vacation affects existing easements within the area of the proposed vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone, or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto, for the purpose of specifying, in any such vacation resolution, the extent to which any or all of any such easements, and such authority to maintain, and to enter upon the area of the proposed vacation, shall continue.

BY ORDER OF THE EDINA CITY COUNCIL
Marcella M. Daehn, City Clerk

NOTICE OF PUBLIC HEARING
ON VACATION OF EASEMENT FOR STREET RIGHT OF WAY PURPOSES
IN THE CITY OF EDINA, HENNEPIN COUNTY, MINNESOTA

NOTICE IS HEREBY GIVEN that the City Council of the City of Edina, Hennepin County, Minnesota, will meet at the Edina City Hall, 4801 W. 50th Street on November 6, 1989 at 7:00 p.m., for the purpose of holding a public hearing on the proposed vacation of the following easement for street right of way purposes:

The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the following described property:

That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter, said northerly line is marked by Judicial landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southwesterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.

All persons who desire to be heard with respect to the question of whether or not the above proposed street vacation is in the public interest and should be made shall be heard at said time and place. The Council shall consider the extent to which such proposed street vacation affects existing easements within the area of the proposed vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone, or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto, for the purpose of specifying, in any such vacation resolution, the extent to which any or all of any such easements, and such authority to maintain, and to enter upon the area of the proposed vacation, shall continue.

BY ORDER OF THE EDINA CITY COUNCIL
Marcella M. Daehn, City Clerk

JAMES A. OSTENDORF
Attorney at Law

9001 E. Bloomington Frwy. • Suite ~~122~~ 123 • Bloomington, MN 55420 • (612) 881-0122

City Clerk
City of Edina
4801 West fiftieth Street
Edina, Minnesota 55424

September 12, 1989

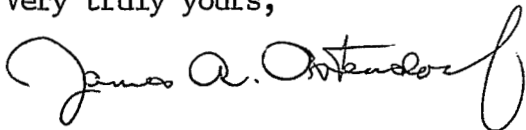
Dear Madam:

The property referenced on the attached application lies within a parcel of land currently being registered. See attached part of the Amended and Substituted Report of Examiner at paragraph 1 for full legal of land being registered. Title to the north half of the old road is being challenged, so fee owners Evans wish to vacate any interest the City of Edina has or had in the old road. I am also attaching letters from the State of Minnesota and the County of Hennepin each attempting to claim the other has an interest.

Lastly, I am enclosing a copy of the boundary survey of Sathre-Berquist, Inc. dated May 2, 1983 and printed August 28, 1989, to give you an idea what we are dealing with. There is currently no survey in existence showing the whole road which decreased in use after the "new" road went in around 1926.

Hopefully the above gives you an adequate summary of why we are making application to vacate. If there are any questions or if I can provide you with further information, please advise.

Very truly yours,



James A. Ostendorf, Esq.

No. 19328

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

FILED

App. Doc. No. 5119001

NW 1/4 32-117-21

SEP 02 1987

In the Matter of the Application of)
LEO M. EVANS, JR., JOHN J. EVANS,)
KAREN EVANS TAYLOR and SUZANNE)
HINDS, Original Applicants; and LEO M.)
EVANS, JR., an undivided five-sixths)
interest, JOHN J. EVANS, an undivided)
one-twelfth interest, and KAREN)
EVANS TAYLOR, an undivided one-)
twelfth interest, Current Applicants,)
To Register the Title to Certain Land)

HENNA. CO. DIST. CT.

BY *B. J. Fack*

AMENDED AND SUBSTITUTED
REPORT OF EXAMINER

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF HENNEPIN COUNTY:

Pursuant to an Order heretofore entered in the above-entitled cause whereby said case was referred to the undersigned Examiner of Titles to examine into the title of the Applicants in and to the land described in the Application, and into the truth of all matters set forth therein, and particularly whether or not the land is occupied, and, if occupied, the nature thereof, and by what right the occupation is held, and also whether or not any judgments against Applicants or those through whom Applicants claim title, exist, which may be a lien upon the land described in the Application, and to search all public records, and fully investigate all facts pertaining to the title which have been brought to my notice; and to make report in writing to the Court of the substance of the proof and file a report thereon, including a Certificate of opinion upon the title; I, said Examiner of Titles, after also having had said land inspected by the County Surveyor and having examined the records indicated on all the abstracts filed herein, do now report as follows:

1. That at the time of the filing of the Amended Application herein, the Current Applicants, LEO M. EVANS, JR., as to an undivided five-sixths interest, JOHN J. EVANS, as to an undivided one-twelfth interest and KAREN EVANS TAYLOR, as to an undivided one-twelfth interest were the record owners, except as hereinafter noted, in fee simple of the certain lands in the County of Hennepin and State of Minnesota described in said Application and as follows:

That part of the Southeast Quarter of the Northwest Quarter,
Section 32, Township 117, Range 21, Hennepin County, Minnesota,

described as follows: Beginning at a point on the Northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said Northerly line from the West line of said Southeast Quarter of the Northwest Quarter, said Northerly line is marked by Judicial Landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the West line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said Northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence Northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most Northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence Southwesterly and Westerly along the Northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

2. Paragraph "F" of the Original Application and the Report of the Hennepin County Surveyor on file herein show that the within land is vacant.

3. That the mortgage on said land is:

None.

4. I note the following encumbrances, defects and irregularities:

(a) The abstract on file herein shows that William Quinn, grantee in deed shown at entry no. 16 conveyed out most but not all of his record title interest in the within land by deeds shown at abstract entry nos. 57, 59 and 68. Current applicants allege at Paragraphs "E" and "I" of the Amended Application that the gaps and the interest of the heirs of William Quinn, deceased, are defects in their title. Accordingly, I assume that there will be evidence at the hearing to support a finding in the Decree to be entered herein that to the extent applicants do not have record title to all of said land, that they and their predecessors in interest have acquired title thereof by adverse possession by occupying it for 15 years in a manner which was actual, open, continuous, hostile and exclusive and accompanied by an intention to claim adversely. I recommend as defendants the heirs or devisees of William Quinn and also the County of Hennepin, judgment creditor of William Allen Quinn in Hennepin County District Court Case No. 83-3184 shown in the Judgment Search Certificate dated June 16, 1986 and attached to the abstract filed herein.

Applicant's attorney shall ascertain whether or not there has been a Minnesota Probate Court determination of the heirs or devisees of said William Quinn. If so, then



Minnesota
Department of Transportation
District 5
2055 No. Lilac Drive
Golden Valley, Minnesota 55422

(612) 593-8403

July 28, 1988

Leo M. Evans
Attorney at Law
2240 Glacier Lane
Santa Maria, CA 93454

Dear Mr. Evans:

Following up on Commissioner Levine's recent letter acknowledging your inquiry of June 8, 1988, this office has now completed the review of Old Eden Prairie Road (Constitutional Route Number 5, later renumbered Trunk Highway 169) in Edina. Each of the six questions you asked is addressed below.

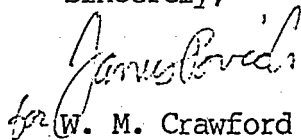
1. Construction of Trunk Highway 169 was completed in 1926 and opened for traffic the following year.
2. On the enclosed Map A, you will find T.H. 169 marked in red and Old Eden Prairie Road shown in green in the vicinity of your property.
3. General Order No. 5563, dated October 26, 1927, officially established T.H. 5 (later renamed No. 169). Center Line Order No. 6755 and Width Order No. 6756, both dated October 13, 1930, officially established the course of the roadway. Therefore, as of October 13, 1930, Old Eden Prairie Road should have been under the jurisdiction of the county. You may wish to contact the Hennepin County Public Works Department for further information about Old Eden Prairie Road.
4. The right of way map (Map A) shows that no access control was acquired in the area of your property. There should have been no restriction of ingress or egress.
5. Eden Prairie Road was a county road taken into the Trunk Highway system by General Order No. 5563. When the new Center Line Order No. 6755 was written establishing the new location of T.H. 5, the old road was then no longer in the Trunk Highway system.
6. Our department has no records on the abandonment of Old Eden Prairie Road, again you may wish to contact the county on this.

July 28, 1988
Mr. Leo M. Evans
Page Two

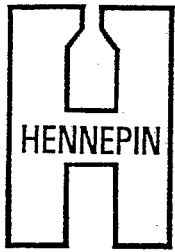
As further information, Map B is enclosed which indicates that Release No. 85 transferred jurisdiction of T.H. 169 back to the county.

I trust this information is helpful to you.

Sincerely,


for W. M. Crawford
District Engineer

4-F(15)



DEPARTMENT OF PUBLIC WORKS
320 Washington Ave. South
Hopkins, Minnesota 55343-8468

June 12, 1989

935-3381

Mr. James A. Ostendorf, Attorney at Law
9001 E. Bloomington Freeway
Suite 123
Bloomington, MN 55420

Re: Leo M. Evans, Jr. property Sec. 32, T. 117, R. 21

Dear Mr. Ostendorf:

I'm writing to inform you as to the origin and present interests of the County in the small segment labeled Old County Road shown on the half section sheet for the North half of Section 32, Township 117, Range 21.

In my capacity as Senior Property Description Technician for Right of Way, I try to maintain all records of present and past County roads. The area in question apparently was considered part of a State Trunk Highway 5 back in the 20's. As is often the case, new alignments and turnbacks, shift designations (sometimes without formal documents) and references to "County Roads", develop without extensive construction or improvements.

I cannot find any documentation of the County interest or release of the old alignment, probably because the "new" alignment of Trunk Highway No. 169 (now County State Aid Highway No. 158) satisfies the County needs in this area.

During our discussion you mentioned a snow fence easement as a possible encumbrance. Snow fence easements were often obtained as part of the old condemnation format or on the printed Highway Easement form reading to the effect "and the right to construct snow fences on the land adjoining said taking". These restrictions were levied before the advent of sophisticated snow removal equipment, and because of the complexity of removing these restrictions most owners ignore the statement. The County no longer installs snow fences.

I wish that I could be more precise in defining the County's involvement in the old road, but our records are relatively clean.

Very truly yours,

Stan Bennyhoff
Senior Property Description Technician

SEB:jrh

HENNEPIN COUNTY
an equal opportunity employer



4801 WEST 50TH STREET, EDINA, MINNESOTA 55424
612-927-8861

September 19, 1989

Mr. James A. Ostendorf
9001 E. Bloomington Frwy.
Suite 123
Bloomington, MN 55420

Re: Vacation of old County Road - Leo Evans Property

Dear Mr. Ostendorf:

In connection with your public right of way vacation application referenced above, Thomas S. Erickson, City Attorney, has reviewed the legal description of the property and has revised it to read per the attachment enclosed.

If you have any questions or problem with this revised legal description, please give me a call. Mr. Erickson felt that the revision would be more inclusive and yet would preserve the right of way easement for the existing County Road No. 159 (Vernon Avenue) and also for Olinger Road.

As I advised you yesterday, your request for the vacation will be placed on the October 2, 1989 Council Agenda to set a hearing date for the meeting of November 6, 1989.

Very truly yours,

Marcella M. Daehn
City Clerk

enc

Leo M. Evans, Jr. Property

Legal description of area proposed to be vacated:

The old road sometimes referenced as "the old County Road" or the "old Eden Prairie road" lying within the following described property:

That part of the Southeast Quarter of the Northwest Quarter, Section 32, Township 117, Range 21, Hennepin County, Minnesota, described as follows: Beginning at a point on the northerly line of EDINA HIGHLANDS LAKESIDE ADDITION distant 406.15 feet East along said northerly line from the west line of said Southeast Quarter of the Northwest Quarter, said northerly line is marked by Judicial landmarks set pursuant to Torrens Case No. 14146; thence North, parallel with the west line of said Southeast Quarter of the Northwest Quarter, 107.25 feet; thence West, parallel with said northerly line, 406.15 feet to said West line; thence North along said West line 144.86 feet, more or less, to the center line of County Road No. 158; thence northeasterly along said center line to the East line of said Southeast Quarter of the Northwest Quarter; thence South along said East line to the most northerly corner of EDINA HIGHLANDS LAKESIDE ADDITION; thence southwesterly and westerly along the northerly line of said addition, which line was determined in Torrens Case No. 14146, to the point of beginning.

Except, however, that this vacation shall not include the existing right of way for County Road No. 158, also known as Vernon Avenue, or the existing right of way for Olinger Road.



HIGHWOOD
OLINGER ROAD S3
BERNE
112.

